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## National

### **1- EPA Reauthorizes Use of “Dangerous” “Cyanide Bombs” that Kill Thousands of Animals Every Year, Newsweek, 12/6/19**

<https://www.newsweek.com/epa-wildlife-killing-cyanide-bombs-campaigners-appalling-decision-1475894>

The Environmental Protection Agency (EPA) has announced that it will reauthorize the use of sodium cyanide in wildlife-killing devices known as M-44s, or "cyanide bombs." The devices are designed to kill certain animals for predator control purposes.

### **2 – EPA Celebrates 49 Years, Kicks Off 50th Anniversary, Waste 360, 12/5/19**

<https://www.waste360.com/public-agencies/epa-celebrates-49-years-kicks-50th-anniversary>

The U.S. Environmental Protection Agency (EPA) recently celebrated its 49th birthday and kicked off a year-long celebration leading up to the agency's 50th anniversary on December 2, 2020.

### **3 - This climate alarm sounded a year ago. Has anything changed?, E&E News, 12/6/19**

<https://www.eenews.net/climatewire/2019/12/06/stories/1061733861>

One of last year's most anticipated climate reports delivered a stark message to the world: Act quickly or prepare to watch a major warming milestone sail by. The Intergovernmental Panel on Climate Change released its special report on the 1.5-degree Celsius target, an ambitious international climate goal outlined in the Paris climate agreement, in October 2018.

### **4 – EPA Chief Says Agency Aims to Set Biofuel Quotas by Dec. 20, Bloomberg, 12/5/19**

<https://www.bloomberg.com/news/articles/2019-12-05/epa-chief-says-agency-plans-to-release-biofuel-rule-by-dec-20>

The EPA is seeking to issue a final rule setting 2020 biofuel blending quotas by Dec. 20, the agency's chief told industry representatives in phone calls Thursday.

### **5 – PFAS Update: EPA Progress Under PFAS Action Plan, National Law Review, 12/5/19**

<https://www.natlawreview.com/article/pfas-update-epa-progress-under-pfas-action-plan>

Earlier this year, we wrote about EPA's PFAS Action Plan, the agency's blueprint for addressing contamination and protecting public health from per- and polyfluoroalkyl substances (PFAS).

### **6 – EPA's Final Risk Management Program Reconsideration Rule More In-Step with OSHA's Process Safety Management Standards, National Law Review, 12/5/19**

<https://www.natlawreview.com/article/epa-s-final-risk-management-program-reconsideration-rule-more-step-osa-s-process>

EPA recently announced a final rule rescinding major amendments to the Clean Air Act §112(r) Risk Management Program (RMP) regulations that were promulgated at the end of the Obama Administration in 2017.

**7 - EPA watchdog says White House budget office blocked part of its investigation into controversial trucks rule, CNN, 12/5/19**

<https://www.cnn.com/2019/12/05/politics/pruitt-epa-glider-trucks/index.html>

The White House budget office "impeded" part of the investigation into a controversial pro-industry decision that former Environmental Protection Agency Administrator Scott Pruitt pushed through on his way out the door, according to an inspector general's report released Thursday.

## Texas

**8 – Feds: 'Fundamental failure' caused Texas plant explosion, E&E News, 12/6/19**

<https://www.eenews.net/energywire/2019/12/06/stories/1061734227>

A chemical plant fire in Texas that has forced residents out of their homes for more than a week was caused by a "fundamental failure," federal investigators said yesterday. The U.S. Chemical Safety Board is still investigating the specifics of the Nov. 27 incident at the TPC Group plant in Port Neches, Texas.

**9 - Cancer cluster identified in Houston neighborhood near Union Pacific railyard's creosote contamination, Houston Chronicle, 12/5/19**

<https://www.houstonchronicle.com/business/article/Cancer-cluster-identified-in-Houston-neighborhood-14885972.php>

State officials have identified a cancer cluster in a north Houston neighborhood near a site contaminated over many decades by railroad operations that treated wooden ties with the hazardous product creosote.

**10 - Retired Texas shrimper wins record-breaking \$50 million settlement from plastics manufacturing giant, Texas Tribune, 12/4/19**

<https://www.texastribune.org/2019/12/03/texas-judge-approves-settlement-agreement-water-pollution-formosa/>

U.S. District Judge Kenneth M. Hoyt approved the settlement agreement between a scrappy environmental coalition and plastics giant Formosa. The settlement is the largest in U.S. history resulting from a citizen environmental suit.

**11 – County ends voluntary evacuation of Port Neches, the second since last week's plant explosion, Texas Tribune, 12/5/19**

<https://www.texastribune.org/2019/12/05/port-neches-plant-explosion-prompts-evacuation-order-one-week-later/>

The city of Port Neches and Jefferson County lifted a voluntary evacuation order Thursday afternoon, less than 24 hours after residents who were displaced for days last week amid a fire and multiple explosions at a local chemical plant were again asked to leave their homes Wednesday night.

## Louisiana

**11 – Louisiana's DEQ saw among largest cuts to state environmental agencies over past 10 years, New Orleans Times-Picayune, 12/5/19**

[https://www.nola.com/news/environment/article\\_b9edcfcc-16fa-11ea-9a1f-e37486f9b033.html](https://www.nola.com/news/environment/article_b9edcfcc-16fa-11ea-9a1f-e37486f9b033.html)

In a 10-year period marked by a dramatic increase in newly built and planned petrochemical plants in the state, the Louisiana Department of Environmental Quality has seen its budget slashed by nearly 35 percent and its staff cut by almost 30 percent.

**12 – New wave of lawsuits linked to BP oil spill hitting courts a decade later, New Orleans Times-Picayune, 12/5/19**

[https://www.nola.com/news/courts/article\\_febcecf6-1834-11ea-968c-eb6f88d76384.html](https://www.nola.com/news/courts/article_febcecf6-1834-11ea-968c-eb6f88d76384.html)

A new wave of lawsuits against BP is hitting the federal courts nearly a decade after the Gulf oil spill. The new litigation is the result of a court ruling that blocks thousands of people from a medical settlement negotiated after the 2010 environmental disaster.

**13 – LSU researcher: Southern Hills Aquifer has ample supply; salt water intrusion no crisis, Baton Rouge Advocate, 12/5/19**

[https://www.theadvocate.com/baton\\_rouge/news/communities/article\\_4792822a-1780-11ea-9640-03741e31ddaa.html](https://www.theadvocate.com/baton_rouge/news/communities/article_4792822a-1780-11ea-9640-03741e31ddaa.html)

Groundwater levels in the aquifer underneath East Baton Rouge Parish have been recovering for at least the past decade, and continuing salt water intrusion into that aquifer doesn't represent a crisis-level threat to the drinking water supply, according to recent research.

## New Mexico

**14 – LANL's seismic safety questioned; lab says improvements are being made, Albuquerque Journal, 12/5/19**

<https://www.abqjournal.com/1397906/lanls-seismic-safety-questioned-lab-says-improvements-are-being-made.html>

An independent oversight board says that efforts to improve safety at Los Alamos National Laboratory in case of an earthquake — the lab sits on a fault — have stagnated and remain incomplete, even as the lab's mission is ramping up for production of plutonium cores for nuclear weapons.

**15 – Law students offer legal advice to Española residents with contaminated water, Daily Lobo, 12/5/19**

<https://www.dailylobo.com/article/2019/12/law-students-offer-legal-advice-to-espanola-residents-with-contaminated-water>

University of New Mexico law students are assisting Española community members with legal advice as the town faces water contamination through the Environmental Law Clinic.

TECH & SCIENCE

# EPA REAUTHORIZES USE OF 'DANGEROUS' 'CYANIDE BOMBS' THAT KILL THOUSANDS OF ANIMALS EVERY YEAR

BY ARISTOS GEORGIU ON 12/6/19 AT 7:08 AM EST





**T**he Environmental Protection Agency (EPA) has announced that it will reauthorize the use of sodium cyanide in wildlife-killing devices known as M-44s, or "cyanide bombs."

The devices are designed to kill certain animals for predator control purposes. They use a smelly bait to lure in wildlife before releasing deadly sodium cyanide into the mouth of any animal that takes a bite.

But critics say that the traps "inhumanely and indiscriminately" kill thousands of animals every year, posing a danger to endangered species, domestic pets and even humans.

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In a statement published on Thursday, the EPA announced a "revised interim decision on sodium cyanide that includes new requirements to ensure continued safe use of the device." But campaigners have described these restrictions as "minor" and limited.

"This appalling decision leaves cyanide traps lurking in the wild to threaten people, pets and imperiled animals," Collette Adkins, carnivore conservation director at the Center for Biological Diversity, said in a statement. "The EPA imposed a few minor restrictions, but these deadly devices have just wreaked too much havoc to remain in use. To truly protect humans and wildlife from these poisonous contraptions, we need a nationwide ban."

The M-44s are used by Wildlife Services—a U.S. Department of Agriculture (USDA) agency that kills millions of animals every year using a variety of methods, ostensibly to protect livestock, according to the Center for Biological Diversity (CBD).

The spring-loaded traps are also authorized for use by state agencies in South Dakota, Montana, Wyoming, New Mexico and Texas.

## Amid new cancer scare reports, will you stop dyeing/straightening your hair ?

27K

- ☐ Yes
- ☐ Need to learn more
- ☐ Doesn't affect me
- ☐ I am not sure

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The USDA's own data suggests that these spring-loaded traps killed 6,579 animals in 2018—the majority of which were coyotes and foxes. At least 200 of these deaths were non-target animals—such as bears, skunks and opossums—although the real figure is likely higher, the CBD says, accusing the agency of poor data collection. According to Adkins, M-44s are dangerous to wildlife and harmful to ecosystems.

"Numerous endangered species have been killed by the devices, as anything that tugs on [them] will be shot with the poison," Adkins said in a statement provided to *Newsweek*. "The animals targeted by cyanide bombs—canids like wolves, coyotes and foxes—play important ecosystem roles as top carnivores, controlling prey populations. For example, coyotes control rodents that spread disease and damage crops."

Furthermore, the traps pose a risk to humans and their pets, with several recorded instances of people being harmed, Adkins said.

"In 2017, an Idaho teenager, Canyon Mansfield, hiking with his dog on the hill behind his home was temporarily blinded and watched his dog die after he grabbed an unmarked device," Adkins said.

In August, the EPA announced that it would reauthorize the use of the traps on an interim basis—albeit with certain restrictions that were put in place in response to pressure from environmental groups. But just a week later, the EPA withdrew this decision to hold further discussions with Wildlife Services on the most appropriate language for the M-44 labels. Thursday's decision now reauthorizes the use of the devices on an interim basis again.

As part of the reauthorization, the EPA has added some new restrictions. For example, the traps cannot be placed within 600 feet of a residence—unless the property owner has given written permission—or 300 feet from designated public paths and roads. The latter restriction is an increase from 100 feet.

Furthermore, the new interim decision requires that the traps must be accompanied by two elevated warning signs within 15 feet, which face in the two most likely directions of approach. Currently, only one sign is required at a distance of 25 feet from the device.

However, critics say that these kinds of restrictions will do little to mitigate the risks posed by these devices and fails to meaningfully address the problem.

"None of the restrictions will prevent non-target wildlife deaths," Adkins said. "We know from past experience that buffers and signs don't work: 1) these restrictions are often not followed—as in the Mansfield case where the device was illegally placed and without a sign; and 2) these restrictions don't eliminate the harm—people and dogs stray from the path when hiking and a couple of signs won't be visible from all directions or can blow over, et cetera."

Meanwhile, Cathy Liss, president of the Animal Welfare Institute, said in a statement: "The EPA's minor revisions do little to reduce the risks sodium cyanide bombs pose to people, fail entirely to address risks to wildlife, including endangered species, and make clear the agency is prioritizing livestock interests over human safety and the environment. The simple solution to preventing further tragedies caused by these inherently dangerous devices is a nationwide ban."

Campaigners say that such a ban would have the overwhelming support of the public. An analysis conducted by the CBD and Western Environmental Law Center found that more than 99.9 percent of the roughly 22,400 people who submitted comments regarding the previous proposal to reauthorize cyanide bombs asked the EPA to ban them.

Following the Mansfield incident, the state of Idaho imposed a moratorium on the use of M-44s on public lands. Meanwhile, the state of Oregon passed legislation this year banning them in the state. Furthermore, a federal court also recently approved a ban on the use of M-44s by Wildlife Services across more than 10 million acres of public land in Wyoming—the result of an agreement that followed a lawsuit brought by the CBD and other advocacy groups.

Supporters of the use of M-44s, such as the National Association of State Departments of Agriculture (NASDA,) say that the traps play an important role in protecting livestock.

## NEED TO KNOW



### EPA Celebrates 49 Years, Kicks Off 50th Anniversary

*Born in the wake of elevated concern about environmental pollution, EPA was established on December 2, 1970.*

Waste360 Staff | Dec 05, 2019

The U.S. Environmental Protection Agency (EPA) recently celebrated its 49th birthday and kicked off a year-long celebration leading up to the agency's 50th anniversary on December 2, 2020.

“Since the agency’s inception under the leadership of the late Administrator William Ruckelshaus, EPA staff have worked tirelessly to clean up our air, water and land for the American people,” said EPA Administrator Andrew Wheeler in a statement. “Together, we have achieved significant milestones in support of our mission to protect human health and the environment. I look forward to celebrating EPA’s accomplishments over the coming year and continuing to build on our progress for future generations.”

Born in the wake of elevated concern about environmental pollution, EPA was established on December 2, 1970, to consolidate into one agency a variety of federal environmental responsibilities including research, monitoring, standard setting and enforcement activities to ensure environmental protection while simultaneously safeguarding human health. The agency’s first administrator, Ruckelshaus, took the oath of office on December 4, 1970.

Some of the agency’s accomplishments over the last 50 years include:

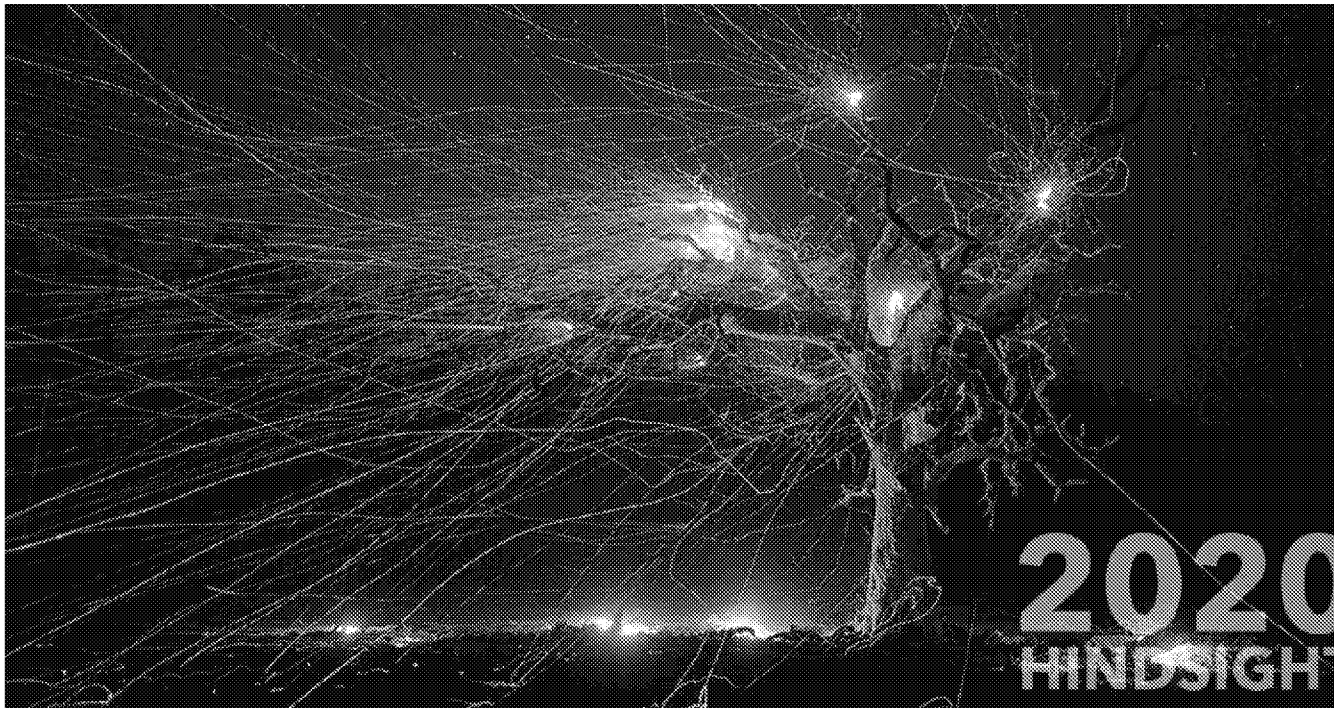
- **Cleaning the air:** From 1970 to 2018, the combined emissions of the six criteria pollutants dropped by 74 percent, while the U.S. economy grew by 275 percent, Americans drove more miles and population and energy use increased.
- **Improving water quality:** In the early 1970s, more than 40 percent of the nation’s drinking water systems failed to meet even the most basic health standards. Today, more than 92 percent of community water systems meet all health-based standards, all the time.
- **Cleaning the land:** Throughout the history of EPA’s Brownfields program, which aims to clean up and sustainably reuse contaminated properties, local communities have been able to use grants to leverage 150,120 jobs and more than \$28 billion of public and private funding.

In honor of 50 years of environmental protection, over the next year, EPA will commemorate the agency’s many achievements and continued progress, culminating in a 50th Anniversary celebration on December 2, 2020.

2020 HINDSIGHT

## This climate alarm sounded a year ago. Has anything changed?

Chelsea Harvey, E&E News reporter • Published: Friday, December 6, 2019



A tree is seen burning in a time-lapse photo during California's Kincadee Fire in October. Paul Kitagaki Jr./TNS/Newscom

Part of a series on the decade's pivotal moments in environment and energy. [Click here](#) to read other stories in the 2020 Hindsight series.

One of last year's most anticipated climate reports delivered a stark message to the world: Act quickly or prepare to watch a major warming milestone sail by.

The Intergovernmental Panel on Climate Change released its [special report](#) on the 1.5-degree Celsius target, an ambitious international climate goal outlined in the Paris climate agreement, in October 2018. The agreement aims to keep global temperatures "well below" 2 C over their preindustrial levels. But it also calls on world leaders to attempt to prevent them from surpassing 1.5 C.

Scientists estimate that global temperatures have already warmed by about 1 C, making even a 2 C goal a formidable challenge. In the years since the signing of the Paris Agreement, there's been widespread debate about whether a 1.5 C target is feasible at all.

Last year's special report — which relied on exhaustive scientific reviews and contributions from dozens of experts around the world — laid the question to rest. The target is still within reach, it found.

But meeting it will require a Herculean global effort, the likes of which have "no documented historic precedent," the report concludes. Global carbon emissions must fall to zero within the next 30 years.

### Impact

The report makes it clear that meeting this target requires a staggering overhaul of the world's electricity, land use, transportation and other infrastructure systems. That means a rapid transition to renewable energy sources, low-carbon fuels and electric vehicles, more sustainable agricultural practices, and the restoration and conservation of forests. And much more.

But "how far it has gone to motivate new policies which actually reduces emissions is far from clear," said Glen Peters, research director at the Center for International Climate Research in Norway.

As participating nations update their climate action pledges under the Paris Agreement, it may become more obvious whether world leaders are strengthening their climate policies accordingly. For the time being, there's been no obvious change in international climate policies spurred specifically by the special report.

But the report might be having an impact in other ways. It could be helping to drive climate-related social movements around the world, and it might be contributing to an "increased focus on net-zero targets," Peters said.



This Florida Power & Light Co. solar facility in Florida will feature 300,000 panels when it's completed next year. Allen Eyestone/Zuma

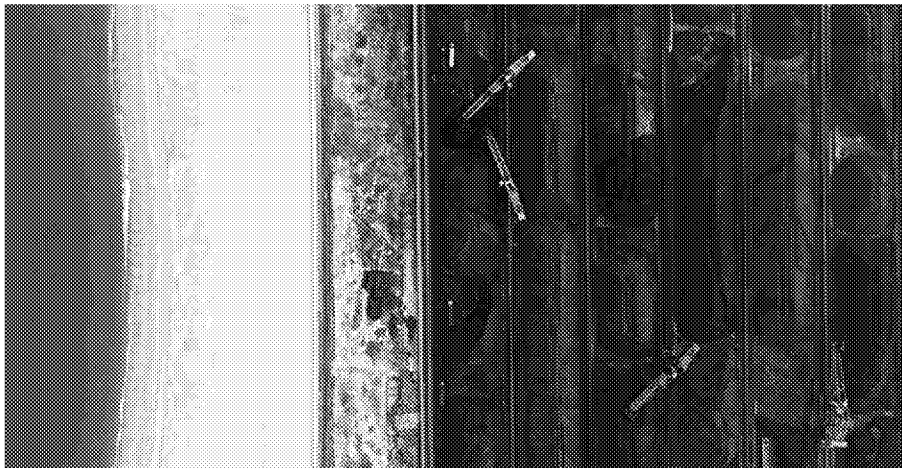
In recent years, discussions around the Paris temperature targets have largely revolved around a concept known as the "carbon budget" — an estimate of how much carbon dioxide output corresponds with a given amount of warming, like 1.5 or 2 C. Carbon budgets are intended to help decisionmakers write policies that will allow them to meet their climate goals.

But some experts have begun to worry that they may be having the opposite effect. The budgets may be too confusing, or they may even contribute to delays in climate action, allowing policymakers to suggest that there's still time to emit a little more carbon as long as the budget isn't empty.

Researchers have recently begun exploring strategies to make the concept of a carbon budget more accessible and useful to world leaders (*Climatewire*, July 18). But some experts maintain that the primary focus of international climate action should be shifting to a global net-zero target.

The 1.5 C report still included a carbon budget. But its main emphasis was the idea that global emissions must shrink to zero by 2050, regardless of debates about the budget.

### Crystal ball



A coal port in China's Shandong province. Wang Kai/Xinhua News Agency/Newscom

It's clear that the world is poised to blow past the 1.5 C target. Global carbon emissions are still climbing and are expected to reach an all-time high by the end of 2019.

Meanwhile, a recent U.N. report confirmed that climate action pledged by nations participating in the Paris Agreement is not enough to keep global temperatures within a 2 C threshold, let alone 1.5 (*Climatewire*, Nov. 26).

Nations participating in the Paris Agreement are asked to strengthen their existing pledges by this time next year, when they'll convene in Glasgow, Scotland, for the U.N.'s annual climate change summit. But it's currently unclear how many participants will do so or how ambitious their revised pledges will be.

It's worth pointing out that the agreement's primary objective remains the 2 C target, Peters said — meaning there may be less political will to shoot for a target that requires more ambitious action.

"If a country argues they are consistent with 2 C, then they could argue they are consistent with Paris and hence need not change policy for 1.5 C," he added.

Authors of the special report have made it clear that the findings constitute a road map for how to achieve the target — but it avoids any evaluation of the likelihood that it will happen. That's up to the rest of the world.

Politics

# EPA Chief Says Agency Aims to Set Biofuel Quotas by Dec. 20

By [Mario Parker](#) and [Jennifer A Dlouhy](#)

December 5, 2019, 3:17 PM CST

Updated on December 5, 2019, 4:48 PM CST

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- ▶ Ethanol and biodiesel producers say current plan falls short
  - ▶ Agency has proposed boosting quotas to offset refinery waivers
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Andrew Wheeler *Photographer: Stefani Reynolds/Bloomberg*

The EPA is seeking to issue a final rule setting 2020 biofuel blending quotas by Dec. 20, the agency's chief told industry representatives in phone calls Thursday.



Environmental Protection Agency Administrator Andrew Wheeler gave the update to renewable fuel producers amid industry concerns the EPA's existing proposal does not do enough to offset waivers exempting refineries from the mandates, according to three people familiar with the matter who asked not to be named describing private conversations.

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The EPA is seeking to send its draft of the final rule to the White House Office of Management and Budget for an interagency review later Thursday, Wheeler said, according to four people familiar with the timing.

Agency officials have described similar ambitions to other biofuel and oil industry representatives, though release of the final rule could still slip to next year.

The calls follow a Bloomberg News report that White House Economic Adviser Larry Kudlow was working to hone the agency's current proposal.

#### Earlier: Larry Kudlow Honing Latest Plan to Buttress Biofuel Mandates

EPA officials have maintained that the agency's plan is consistent with a White House-brokered agreement to adjust biofuel-blending requirements and fully offset refinery exemptions, though renewable fuel producers say the formal proposal falls short of the guarantee they need.

Under that proposal, the adjustments would be based on recent Energy Department recommendations for refinery waivers, not the higher amount the EPA has actually granted in recent years. However, the EPA also signaled it will closely follow those recommendations in the future.

The administration has struggled to find a balance on the issue, which divides some of President Donald Trump's core constituencies: blue-collar oil refinery workers and corn farmers.

Biofuel allies have directly asked the president to insist on changes in the EPA proposal to better ensure exemptions are offset, even as politicians from states with significant oil refining interests push back against further efforts to assuage ethanol and biodiesel producers.

*(Updates with details on timeline from third paragraph)*

## In this article

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CL1

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# PFAS Update: EPA Progress Under PFAS Action Plan

Article By:  
Megan Baroni

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Earlier this year, we wrote about EPA's PFAS Action Plan, the agency's blueprint for addressing contamination and protecting public health from per- and polyfluoroalkyl substances (PFAS). The PFAS Action Plan, released in February 2019, details a number of actions EPA plans to take with regard to PFAS, including time frames for implementation. EPA has been making some progress towards implementation, albeit not always on the timeline set forth in the Plan. Below are a few updates since February:

## Toxics Release Inventory (TRI) Listing for Certain PFAS Compounds

Yesterday, EPA published notice that it is considering a rule to add PFAS compounds to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act. This listing would require certain industry sectors to annually report releases of these chemicals. The purpose of the TRI program is to provide the public with information, or, as EPA puts it, "A Right to Know, A Basis to Act."

The published notice seeks comment from the public as to whether PFAS compounds should be included in the TRI. Specifically, EPA seeks input on:

- which PFAS compounds should be evaluated for inclusion;
- whether PFAS compounds should be listed individually or in categories;
- the appropriate reporting thresholds; and
- the human health and environmental toxicity, persistence, and bioaccumulation of PFAS.

The public comment period ends on February 3, 2020.

## Regulation of PFAS Under the Safe Drinking Water Act (SDWA)

In the PFAS Action Plan, EPA committed to proposing regulatory determinations for PFOA and PFOS—two of the most common PFAS compounds—by the end of 2019. These regulatory determinations are the first step under the SDWA towards the development of Maximum Contaminant Levels (MCLs). EPA is still moving towards this goal, but the draft regulatory determinations are not likely to be released for public comment until early 2020.

## Monitoring for PFAS

EPA intends to test for PFAS compounds during the next round of unregulated contaminant monitoring under the SDWA. The purpose of this monitoring is to collect data for contaminants that are suspected to be in drinking water but do not yet have established health-based standards under the SDWA. During the last round of monitoring, EPA tested

for six PFAS compounds. EPA may look to expand that list, and it also plans to use newer sampling methods to detect compounds at lower minimum reporting levels than previously possible. The list of contaminants for the next round of testing is expected to be released in 2020.

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Source URL: <https://www.natlawreview.com/article/pfas-update-epa-progress-under-pfas-action-plan>

# EPA's Final Risk Management Program Reconsideration Rule More In-Step with OSHA's Process Safety Management Standards

Article By:

Christopher L. Bell

Michael T. Taylor

Genus Heidary

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The Environmental Protection Agency recently announced a final rule rescinding major amendments to the Clean Air Act §112(r) Risk Management Program (RMP) regulations that were promulgated at the end of the Obama Administration in 2017. The 2017 revisions were promulgated partially in response to a 2013 explosion at a fertilizer company in West Texas, which caused 15 fatalities and injured more than 260 people,<sup>1</sup> and had yet to go fully into effect due to administrative and court challenges and because most of the compliance deadlines had not yet been triggered.

The provisions of the 2017 rule that have been rescinded include requirements:

- To assess theoretically safer technology and alternative analysis of risk management measures targeting process hazards;
- For third-party compliance audits after a reportable RMP accident; and
- To perform root cause analyses after RMP accidents or near misses.

In rescinding the 2017 amendments, EPA noted that it was maintaining (actually returning to) consistency with the related Process Safety Management (PSM) program administered and enforced by the Occupational Safety and Health Administration (OSHA). While PSM is intended to address occupational exposures to the risk of chemical accidents, and RMP deals with the public and environmental exposures to those same risks, as a practical matter there is considerable technical and jurisdictional overlap between the two programs.

However, sufficient differences remain such that facilities should not assume compliance with one program ensures compliance with the other. There can also be significant differences in penalty outcomes, with EPA's RMP penalties frequently orders of magnitude larger than parallel OSHA PSM penalties arising from the same incident.

This "rollback" does not mean the RMP program has gone away: it remains in effect in its pre-2017 form, and the regulated industry should expect and be prepared for its enforcement. EPA has announced that enforcement of the RMP regulations and the companion Clean Air Act §112(r)(1) "general duty clause" will be national enforcement priorities in the coming years. Enforcement actions under the pre-2017, and now current, RMP regulations have generated penalties in the hundreds of thousands and sometimes millions of dollars, and have also led to criminal indictments. See October 2019 GT Alert, United States Indicts Facility Owner Under Clean Air Act General Duty Clause. The same can be true regarding OSHA enforcement of the PSM standard, depending on the alleged safety infractions found during the inspection.

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<sup>1</sup> U.S. Chemical Safety Board, West Fertilizer Explosion and Fire, Final Report (Jan. 28, 2016).

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Source URL: <https://www.natlawreview.com/article/epa-s-final-risk-management-program-reconsideration-rule-more-step-osha-s-process>

# EPA watchdog says White House budget office blocked part of its investigation into controversial trucks rule

By Gregory Wallace

Updated 5:42 PM ET, Thu December 5, 2019

**Washington (CNN)** — The White House budget office "impeded" part of the investigation into a controversial pro-industry decision that former Environmental Protection Agency Administrator Scott Pruitt pushed through on his way out the door, according to an inspector general's report released Thursday.

The EPA inspector general report concluded that EPA, and possibly the budget office, bypassed key steps when it rushed through Pruitt's proposal to lighten regulations on some heavy-duty trucks using older, less-efficient engines.

Pruitt resigned under a cloud of ethical questions, including allegations he wasted taxpayer funding on extravagant travel arrangements and an unprecedented security detail that surrounded him 24/7, and that he lived in a lobbyist's apartment at a cut-rate lease.

But the inspector general's office said it couldn't get all the information it wanted from the White House Office of Management and Budget.

The office "refused to provide ... specific responses or documentation," the inspector general said Thursday. The office told the inspector general that the information was "particularly sensitive."

"OMB does not release deliberative information from the interagency review process," OMB press secretary Chase Jennings told CNN. "We provided appropriate information to the EPA inspector general to assist in their investigation."

## Glider kits

The glider industry is premised on heavy-duty engines used in semi-trucks outlasting the truck bodies themselves. Glider kits allow new bodies to be paired with older, still functioning engines -- and give the trucking industry a way around the fuel-efficient technology required on newer engines, which they argue is more expensive and less reliable.

As he left the EPA in June 2018, Pruitt a last-minute concession to the industry: He announced that EPA would not enforce the Obama-era rules tightening regulations. Pruitt's successor, Andrew Wheeler, overturned that decision, saying it was made under "extremely unusual circumstances."

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"It is my understanding that such analysis (and data) does not exist; that such analysis will not be produced in the timeframe in which we are working; and that, in any event, if such analysis were ever to be produced, it would most likely not be as 'supportive' of the proposal as OMB and others might like," reads the email.

The two agencies went back and forth over the next three weeks, until an OMB official proposed a workaround: Simply downgrade the rule and bypass the assessments, including impacts on children's health.

The report notes that in the months before he proposed the changes, Pruitt also "met with representatives of a major glider assembler" and received a petition from the industry.

Pruitt could not immediately be reached for comment.

The agency said in a response to the report that it "agrees with the principles of transparency and public participation in the rulemaking process that the OIG highlights," and agreed to make further public disclosures if it moves forward with the proposed rule. An EPA spokesman said the agency had nothing further to add.

The Democratic senators who requested the report said it showed "a legally and scientifically flawed process" for developing the proposed rule.

"According to the report, Mr. Pruitt insisted that his staff plow ahead with this rollback without a cost-benefit analysis or children's health impact assessment, as required by law," said Sen. Tom Udall and Tom Carper.

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CHEMICALS

## Feds: 'Fundamental failure' caused Texas plant explosion

Mike Lee, E&E News reporter • Published: Friday, December 6, 2019



A process tower flies through the air after an explosion at the TPC Group plant in Port Neches, Texas, on Nov. 27. Erwin Sebä/Reuters/Newscom

A chemical plant fire in Texas that has forced residents out of their homes for more than a week was caused by a "fundamental failure," federal investigators said yesterday.

The U.S. Chemical Safety Board is still investigating the specifics of the Nov. 27 incident at the TPC Group plant in Port Neches, Texas. Workers reported seeing a vapor cloud leaking from the plant's equipment at about 1 a.m., which ignited in a fireball. A second explosion toppled a tower at the complex and launched a piece of equipment off the site.

The fire wasn't extinguished until Dec. 3, TPC said on its [website](#).

"The basic rule of safe operations at any facility is to keep the product in the pipes," CSB member Manny Ehrlich said during a news conference.

"On the morning of Nov. 27, there was a fundamental failure in a system that resulted in this major incident."

The TPC plant manufactures butadiene, a carcinogenic chemical that's used to produce rubber and other products. The workers' description is "consistent with" a butadiene leak, Ehrlich said. TPC and Texas environmental officials are monitoring the air around the site but haven't released the test results.

The explosions smashed windows and knocked doors off their hinges in neighborhoods around the plant, according to the Associated Press. Local authorities ordered residents to evacuate the area for days after the initial explosion and later called for another voluntary evacuation that ended yesterday.

The safety board is still assessing the damage in those areas and waiting for the plant itself to be stabilized so that investigators can visit the site.

The explosion was one of a string of incidents at refineries and chemical plants along the Gulf Coast, which is home to the U.S. oil industry. The safety board, which is an advisory agency and not a regulator, is looking at that trend along with the circumstances of each incident ([Greenwire](#), Dec. 5).

"We're committed to learn from all these incidents," said Lauren Grim, a supervisory investigator for the safety board. "We want the rate of these accidents to decrease ultimately."

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BUSINESS

## Cancer cluster identified in Houston neighborhood near Union Pacific railyard's creosote contamination

**Erin Douglas**

Dec. 5, 2019 | Updated: Dec. 6, 2019 7:23 a.m.



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Barbara Beal, 75, poses for a photograph at her mother's house on Lavender Street in the Kashmere Gardens neighborhood on Thursday, March 21, 2019, in Houston. Beal said she moved into this house when she was nine years old, and lived here on and off during her adulthood. But then moved back full-time several years ago to take care of her ...

Photo: Yi-Chin Lee, Staff / Staff photographer

State officials have identified a cancer cluster in a north Houston neighborhood near a site contaminated over many decades by railroad operations that treated wooden ties with the hazardous product creosote.

Creosote, a preservative considered a probable cancer-causing substance, or carcinogen, by the Environmental Protection Agency, was used for more than 80 years in

deep into the ground and created a plume that has moved beneath an estimated 110 homes in the area and contaminated groundwater.

Greater-than-expected incidences of adult cancers were identified near the site, according to a report by the Texas Department of State Health Services.

“Staff analyzed Texas Cancer Registry data available for a 17-year period spanning from 2000 through 2016,” according to the report. “Lung and bronchus, esophagus, and larynx cancers were statistically significantly greater than expected.”

The state’s health department said in a statement that the analysis cannot prove what caused the observed cancers in the area. But while the study does not directly link the creosote contamination to the cause of the cancer cluster, experts say the types of cancers identified are consistent with the chemicals, such as arsenic, that make up creosote. Exposure to arsenic, the Environmental Protection Agency has found, is linked to lung cancer.

“The contaminants in the plume are linked to those specific cancers (found),” said Loren Hopkins, the chief environmental science officer for the Houston Health Department. “It was a very severe situation before (the cluster was found), and now it’s tragic.”

In January 2019, the city of Houston — as a whole — was found to have elevated levels of intrahepatic bile duct cancer, a rare form of the disease that occurs in the bile ducts of the liver. But the cancer cluster in the Fifth Ward/Kashmere Gardens area is otherwise the first identified within Houston’s city limits. There have been three cancer studies conducted by the state’s health department in Houston.

The study of the Fifth Ward/Kashmere Gardens neighborhoods compared rates of cancers in 10 census tracts on both sides of the rail yard near Liberty Road to rates that would be expected in the state of Texas, holding demographic characteristics such as race, sex and age constant. The study found that the rates were significantly higher than what would statistically be expected.

For some residents, the study proves what they suspected all along.

## On HoustonChronicle.com: Neighbors contend with rail yard after decades of contamination

Union Pacific Railroad of Omaha, Neb. became the owner of rail yard when it acquired Southern Pacific Rail in 1996, about dozen years after creosote operations had ended. In 2014, Union Pacific began sending letters to residents whose homes were found to be in the contamination zone.

The company asked residents to agree to never use their groundwater as a well source in order to obtain a renewal permit from the Texas Commission on Environmental Quality, the state's environmental regulator. The renewal permit would largely have allowed the company to leave the contamination in the ground without pursuing more extensive cleanup efforts, which the company argued were both unnecessary and too difficult.

TCEQ in April asked the company to test the air in homes that might be affected by the contamination. After determining that Union Pacific's well monitoring system was inadequate, the agency asked the company to install more wells to perform more frequent extraction of the contamination. TCEQ also requested a cancer cluster study be completed.

## On HoustonChronicle.com: State asks Union Pacific to test air in homes affected by creosote contamination near Houston's Fifth Ward

"TCEQ continues to oversee cleanup activities being performed at the site," said Andrew Keese, spokesperson for TCEQ, in a statement.

The city has also tried to assist residents in the area. It is conducting its own health study to determine the methods by which residents may have been exposed to contamination.

Raquel Espinoza, a Union Pacific spokesperson, said Thursday that the company had just received the Department of State Health Services' study and was still reviewing it.

For some residents, the news hit hard, suggesting that loved ones were victims of something larger than chance.

knew she would get cancer, you think we would have stayed there? No.”

Union Pacific, which has sent representatives to meetings with residents in the last year, has said that it understands the community's concerns and will comply with TCEQ's environmental standards.

Kashmere Gardens is one of the oldest and poorest communities in Houston. The median income in the area is \$26,644, compared to \$49,399 for all of Houston. About 35 percent of families live in poverty, more than double Harris County's 14 percent poverty rate, according to the Census. Residents said they believe Union Pacific does not care about their plight because they don't have the resources to take on a multibillion dollar company.

Residents said they did not find out about the contamination until they started receiving the letters from Union Pacific. They subsequently organized a group, IMPACT, to pressure Union Pacific to conduct further cleanup efforts in the area. They also contacted city and state representatives to request further action.

In April, Congresswoman Sheila Jackson Lee hosted a town hall in the community. It was at that meeting that TCEQ agreed to request a cancer cluster study be done on the area.

On HoustonChronicle.com: Rep. Sheila Jackson Lee, Houston residents push for study on rail yard contamination

Derek Jones, 64, who has lived in the community all his life, said that policymakers need to address environmental issues in general — not just the rail yard contamination, but pollution all over Houston.

“This is just one source,” Jones said. “There's air pollution, we've seen what's going on with the refinery fires. We've had flooding, and we don't know what contaminants are coming from the Bayou. We don't know what pollutants are being put into our environment.”

Hopkins, the city's environmental officer, said the next step to address the creosote contamination would likely be an epidemiological study that would attempt to determine

“Someone needs to be held accountable,” said Richard Hudson, who lived in the area for 30 years, and whose mother and brother died of cancer. “I don’t want my family or anyone else’s to go through anything like this.”

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# Retired Texas shrimper wins record-breaking \$50 million settlement from plastics manufacturing giant

U.S. District Judge Kenneth M. Hoyt approved the settlement agreement between a scrappy environmental coalition and plastics giant Formosa. The settlement is the largest in U.S. history resulting from a citizen environmental suit.

BY KIAH COLLIER DEC. 3, 2019 UPDATED: 4 PM



Diane Wilson organizes bags of plastic pellet samples she's collected over the past three years near the Formosa plant.

Emree Weaver / The Texas Tribune

*Editor's note: This story has been updated with a statement from Formosa.*

A federal judge approved a historic settlement agreement Tuesday between Taiwan-based plastics manufacturer Formosa and a scrappy environmental activist represented by indigent legal services nonprofit Texas Rio Grande Legal Aid.

TRLA said the \$50 million settlement is the largest in U.S. history involving a private citizen's lawsuit against an industrial polluter under federal clean air and

water laws. The money will be poured into a trust over the next five years and used to pay for programs supporting pollution mitigation, habitat restoration, public education and other environmental efforts on the middle Texas Gulf Coast.

Diane Wilson, a retired shrimper and an environmental activist, sued Formosa in July 2017, alleging that its Port Comfort plant had illegally discharged thousands of plastic pellets and other pollutants into Lavaca Bay and other nearby waterways. Environmental group San Antonio Bay Estuarine Waterkeeper, represented by two private attorneys, joined Wilson in the suit.

In its defense, Formosa — which is in the process of expanding the plant — argued that a \$121,875 fine against it by the Texas Commission on Environmental Quality, the state's environmental regulatory agency, made the lawsuit moot.

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But U.S. District Judge Kenneth M. Hoyt strongly disagreed in a June ruling, calling the company a "serial offender" and saying that "the TCEQ's findings and assessment merely shows the difficulty or inability of the TCEQ to bring Formosa into compliance with its permit restrictions."

Hoyt approved the \$50 million settlement, which the parties announced in October, on Tuesday during a hearing in Victoria.

"Having the \$50 million settlement go to local environmental projects feels like justice," Wilson said in a statement. "Formosa polluted Lavaca Bay and nearby waterways for years. Now it will pay for strong community projects that will improve the health and welfare of our waterways and beaches."

In a statement, TLRA noted that the settlement is not only the largest citizen suit settlement in U.S. history, but the largest by far — five times larger than the next highest clean water settlement and tens of millions of dollars more than the next highest clean air settlement, which Texas environmental groups won in a case against ExxonMobil.

During the weeklong trial in the Formosa case, which began in late March, Wilson and Waterkeeper members dragged in boxes full of thousands of milky



white plastic pellets they had painstakingly collected from Lavaca and Matagorda bays and Cox Creek with the help of volunteers.

Formosa released a statement Tuesday afternoon that said the company "has agreed to implement a range of improvements to the wastewater and stormwater discharge facilities" at the plant. Those include installation of holding ponds to contain all stormwater on the property, improved capacity for its stormwater drainage systems and other changes designed to keep plastics out of the plant's wastewater.

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In a statement issued in October when the settlement was announced, the executive vice president for the U.S. branch of Formosa said the conditions laid out in the agreement "demonstrate Formosa's commitment to manufacturing our products in a safe and environmentally friendly manner.

"We will continue to partner with local communities and stakeholders to ensure that [Formosa Plastics Corporation] USA environmental programs are at the top of our industry," Ken Mounger said.

Under the settlement, Formosa agreed to comply with "zero discharge" of all plastics in the future and to clean up existing pollution. Hoyt inquired about that progress during the hearing Tuesday, saying he wanted to make sure it became a reality.

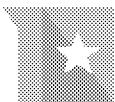
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If Formosa is found to be in violation again, additional fines for each documented discharge will be paid into the settlement fund. The first penalty would cost the company \$10,000 per discharge this year, with yearly increments climbing to more than \$54,000 per discharge.

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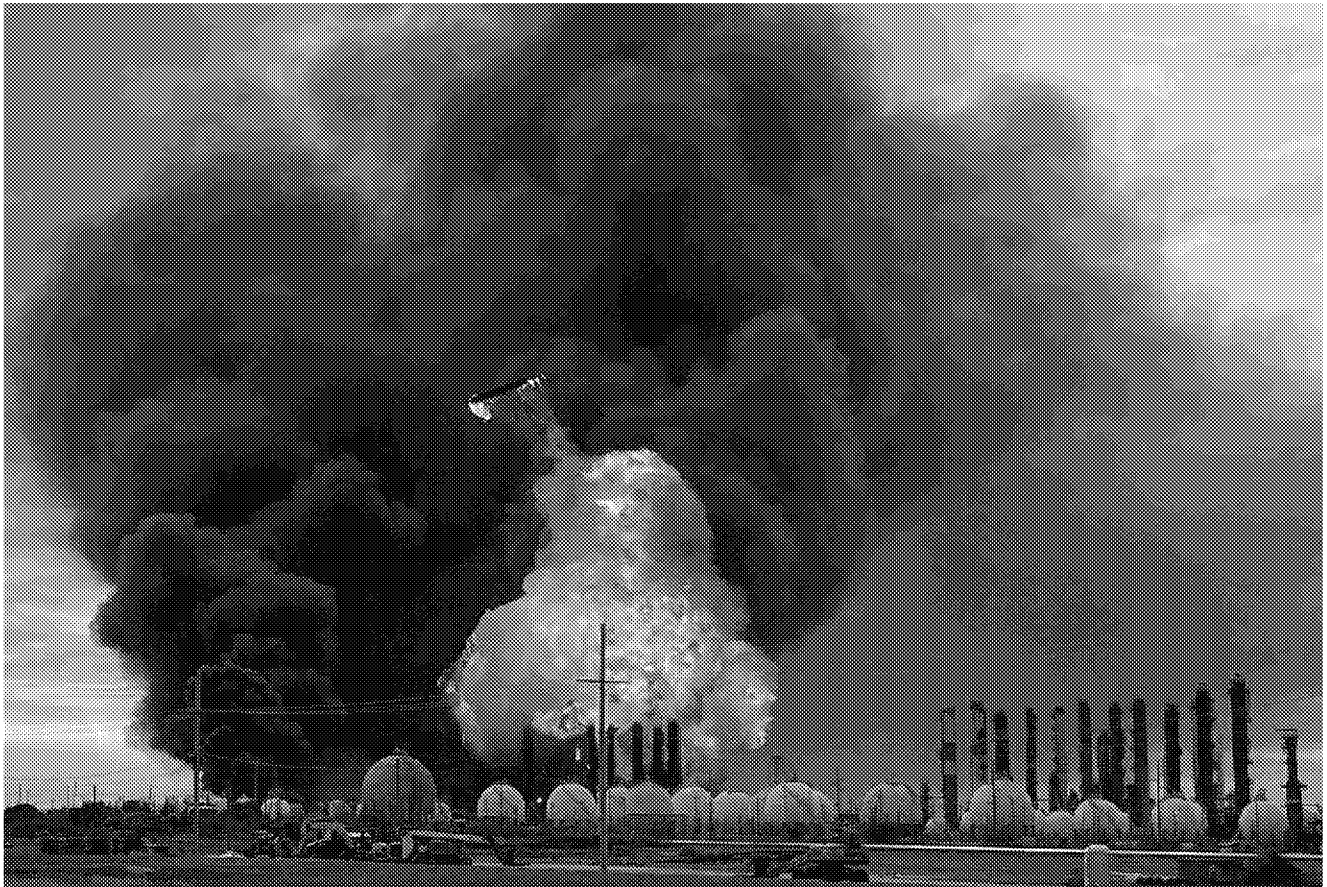
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# County ends voluntary evacuation of Port Neches, the second since last week's plant explosion

After recommending Wednesday night that residents leave the area, Jefferson County officials have told residents it's safe to return home.

BY KIAH COLLIER AND JOLIE MCCULLOUGH DEC. 5, 2019 UPDATED: 17 HOURS AGO



A process tower flies through air after exploding at the TPC Group petrochemical plant in Port Neches. A massive explosion also sparked a blaze at the plant Nov. 27. © REUTERS/Erwin Seba

The city of Port Neches and Jefferson County lifted a voluntary evacuation order Thursday afternoon, less than 24 hours after residents who were displaced for days last week amid a fire and multiple explosions at a local chemical plant were again asked to leave their homes Wednesday night.

The voluntary evacuation order was issued "out of an abundance of caution," according to a statement the county sent out at 10 p.m. Before the order, the city's 13,000 residents had been advised to shelter in place.

"It is recommended you leave the area as quickly and safely as possible as a protective action," the statement said.

Early Thursday afternoon, the Jefferson County Office of Emergency Management said that the shelter-in-place and evacuation orders were lifted due to improved conditions. The office said staff had been working to stop leaks that contributed to elevated levels of 1,3 butadiene, an extremely flammable, colorless gas often used to make rubber. It is one of the main chemicals produced at the plant owned by Houston-based TPC Group, where a fire broke out last week — the day before Thanksgiving — that sparked two major explosions and burned for more than a week.

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"As a result of the actions taken, the levels have now been greatly reduced to non-irritating amounts," the office said in a Facebook post. "Air monitoring will continue to ensure the levels are being maintained at their current measurements."

The evacuation order was issued because winds and high humidity in the area were expected to keep vapors near the ground, according to the Port Neches Police Department.

"The current levels being measured do not pose a serious health risk but may cause dizziness, nausea, headaches, irritated eyes and throat," the department said in Facebook post late Wednesday night.

Earlier Thursday morning, the department said that air monitoring showed butadiene levels had decreased overnight but that the voluntary evacuation remained in effect. The shelter-in-place order also remained in effect, according to the county emergency management office. The local school district canceled classes for the rest of the week.

Exposure to low doses of butadiene can irritate the eyes, nose, throat and lungs, according to the Occupational Safety and Health Administration. Higher doses can cause more serious issues such as vertigo, nausea, low blood pressure and fainting. Long-term exposure can cause cancer.

In its statement Wednesday night, Jefferson County said that Unified Command — a coalition of local, state and federal environmental and emergency management agencies actively responding to the incident — is

"continuously monitoring air in the community and will provide an update once an all clear is given."

County leaders scheduled a press conference for 2 p.m. Thursday.

Many residents expressed frustration over the late nature of the evacuation order in Facebook posts Thursday, saying they were already asleep when it was announced.

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The U.S. Environmental Protection Agency has considered the TPC facility a high-priority violator for more than two years. State data shows the facility has reported spewing more air pollution than allowed by its government-issued permits five times this year, including hundreds of pounds of butadiene.

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# Louisiana's DEQ saw among largest cuts to state environmental agencies over past 10 years

BY MARK SCHLEIFSTEIN | STAFF WRITER DEC 5, 2019 - 10:30 AM



A 2009 aerial view of the Dow Chemical Co. Plaquemine manufacturing complex in Ascension and Iberville parishes. Louisiana's Department of Environmental Quality has seen reduced funding and staff over the past 10 years, according to a national environmental watchdog group.

RICHARD ALAN HANNON

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In a 10-year period marked by a dramatic increase in newly built and planned petrochemical plants in the state, the Louisiana Department of Environmental Quality has seen its budget slashed by nearly 35 percent and its staff cut by almost 30 percent.

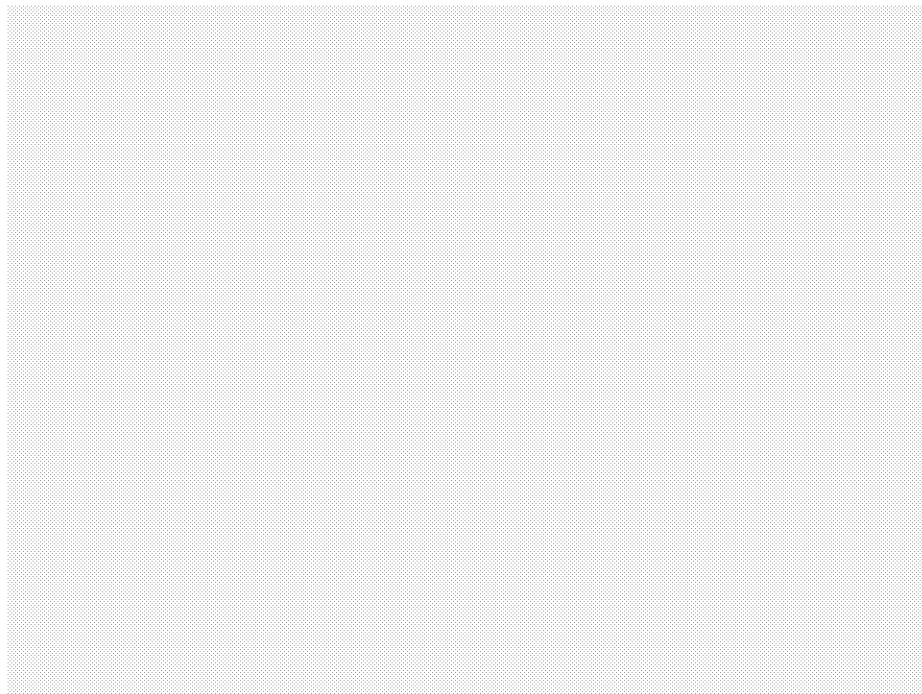
So says a new report from the Environmental Integrity Project, a Washington, D.C.-based organization that terms itself an environmental enforcement watchdog.

Louisiana's funding cut percentage ranked second among the states, tied with Texas. The state ranked fourth in the percentage of staffing cuts, with Illinois, North Carolina and Arizona seeing larger cuts of 38% to 32%, according to the report.

The DEQ budget was \$164 million in fiscal year 2008, which the environmental group said amounted to \$192 million in 2018-equivalent dollars. The fiscal year 2018 budget was only \$125 million, according to the report.

During that same 10-year period, Louisiana's overall state budget shrank by 15 percent, according to the report.

An analysis of state Civil Service data by The Times-Picayune | The Advocate shows that, excluding healthcare and education, state employment dropped by 35 percent over the same 10-year period covered by the report, a bit more than the reductions at DEQ.



The Louisiana Department of Environmental Quality's budget for fiscal year 2018 was 35 percent lower than in fiscal year 2008, when the 2008 amount was adjusted for inflation.

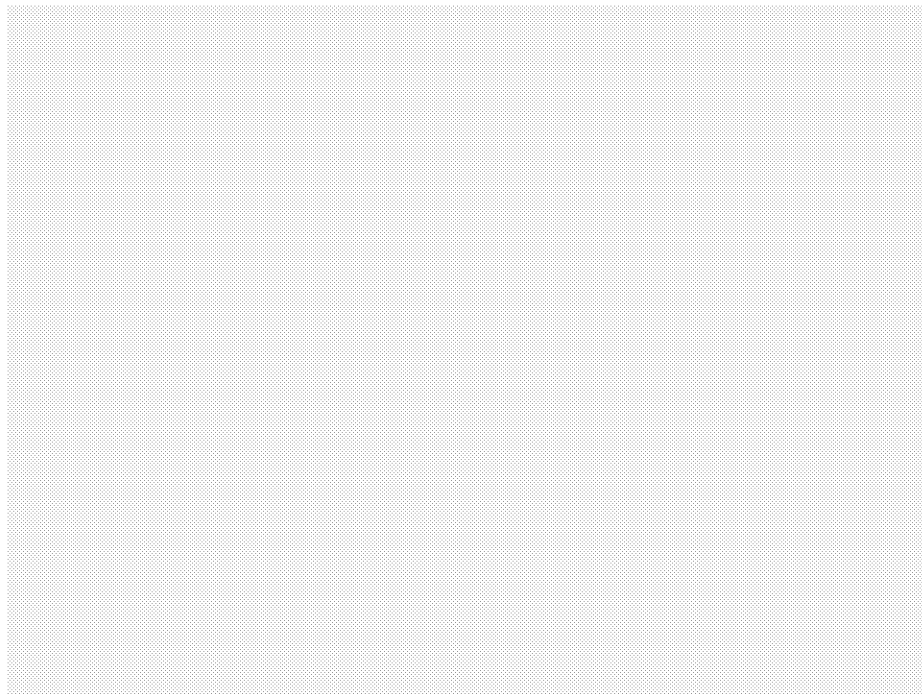
Environmental Integrity Project

The report points out that since 2012, Louisiana has approved 42 new major petrochemical projects and has 11 more new projects awaiting permit approvals.

The report says the cuts in Louisiana and other states raise questions about the Trump administration's call to cut the U.S. Environmental Protection Agency's budget in the name of returning environmental regulatory authority to the states.

“The Trump administration has been trying to roll back EPA’s authority and funding by arguing that the states will pick up the slack and keep our air and water clean,” said Eric Schaeffer, executive director of the Environmental Integrity Project and a former director of civil enforcement at the EPA, in a news release announcing the report.





The Louisiana Department of Environmental Quality lost 30 percent of its staff between fiscal year 2008 and 2018.

Environmental Integrity Project

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“This is just a shell game, however, because state agencies are often badly understaffed and the EPA workforce is already at its lowest level in more than 30 years,” he said. “Neither EPA nor states have the funding they need to meet their responsibilities under the Clean Air Act, Clean Water Act and other laws that protect the public’s health and our environment from dangerous pollution.”

“The EPA’s strategic plan for 2020 promises to ‘restore authority to the states through cooperative federalism,’ while ‘sharply refocus(ing)’ EPA on supporting states,” says the report, titled “The Thin Green Line: Cuts to State Pollution Control Agencies Threaten Public Health.”

Several recent EPA administrators have also suggested that the Trump administration’s goal is to reduce regulatory delays for permitting new facilities and expansion of existing ones, and recommended that more control over permitting and enforcement be handled by the states.

“The Trump administration wants the public to believe that EPA can step back without harm to public health or the environment because states have shown they can pick up the slack,” the report says. But it points to the state reductions as evidence that the states are not ready to take on additional regulatory burdens.

The report says 21 states, including Louisiana, have seen their environmental regulatory staffs cut by at least 10% during the last decade. Louisiana was also among 25 states that reduced funding for pollution control programs by at least 10%.

DEQ Secretary Chuck Carr Brown and other representatives of the department did not respond to a request for comment. But Brown recently defended his agency’s record, including his practice of avoiding large fines in working with industries so as to move them back into compliance as quickly as possible.

Part of that process, Brown said, is having facilities pay for “beneficial environmental projects,” where the offending company spends money on a community improvement instead of paying a fine.

According to the report, California was the only state where both spending and staff for environmental protection were increased. The state agency’s budget was raised by 75%, allowing the state to hire an additional 1,255 employees.

The report also points out that the reductions in both staff and money occurred in states governed by both Democrats, like New York, and Republicans, like Texas.

The cuts to Louisiana’s DEQ funding and staffing issues are seen as part of a larger enforcement problem by at least one local environmental group that has been sought to get the agency to beef up its regulation of refineries and petrochemical facilities.

“The Louisiana Department of Environmental Quality needs two things: more money in its budget and the will to enforce the law,” Anne Rolfes, director of the Louisiana Bucket Brigade, an environmental group based in New Orleans, was quoted as saying in the report. “Demoralized employees lack the proper funding to do their jobs, and they are vulnerable to industry pressure. The petrochemical industry will not miss an opportunity in Louisiana to exploit a weakened enforcement agency, and we in Louisiana suffer because of it.”

The report also lists a series of environmental challenges facing Louisiana, based on the organization’s review of EPA and DEQ records:

The report says that more than a third — 15 of 43 — of the Louisiana facilities categorized as petroleum refineries in EPA enforcement records have been listed as in continuous noncompliance with pollution control laws during the past three years, including the Dow Chemical Louisiana Operations campus in Iberville Parish, the ExxonMobil Baton Rouge chemical plant and the Phillips 66 refinery in Lake Charles.

The state also has a dozen major wastewater plants and other industrial facilities listed by the EPA as in significant noncompliance with the federal Clean Water Act, including the Baton Rouge and Springhill sewage treatment plants, which have been in continuous violation for the last three years, according to EPA records.

Another 72 industrial facilities have been listed by the EPA as having “high priority” violations of the Clean Air Act, with another 49 listed as in current violation of federal hazardous waste laws.

In an interview, Rolfes said that instead of focusing staff efforts on ensuring that facilities are using the best available control technologies, as required by federal law, the state has adopted an “expedited permit program” that has allowed industries to

pay higher fees to cover the costs of overtime required to speed permit approvals. The result, she said, is that the state's limited regulatory resources are actually adding new pollution threats to the community.

Brown said Louisiana's success in managing air pollution can be seen in the removal of all but one of the state's 64 parishes from a national list of counties in "nonattainment" with federal ozone regulations. All five parishes surrounding Baton Rouge had been on that list for years but were removed by the EPA in 2018, the result of improvements in both car exhaust emissions and emissions from regional industries, he said.

The one parish still out of compliance is St. Bernard, the result of sulfur dioxide emissions from one or more refineries.

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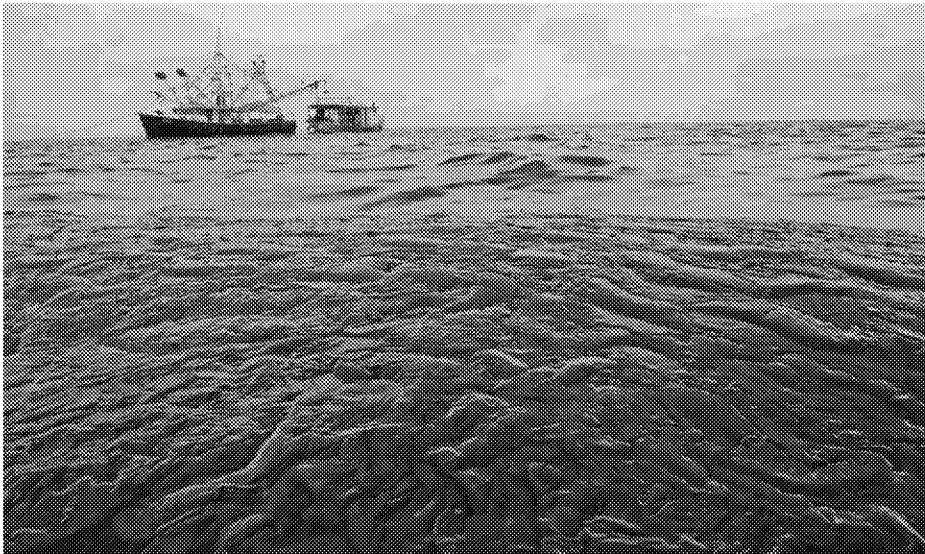
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# New wave of lawsuits linked to BP oil spill hitting courts a decade later

BY THE ASSOCIATED PRESS DEC 6, 2019 - 8:43 AM

1 of 14



A shrimp boat modified to collect oil floats past a boat-sized oil slick from the Deepwater Horizon disaster near Queen Bess Island on June 5, 2010.

MATTHEW HINTON

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MOBILE, Ala. — A new wave of lawsuits against BP is hitting the federal courts nearly a decade after the Gulf oil spill.

The new litigation is the result of a court ruling that blocks thousands of people from a medical settlement negotiated after the 2010 environmental disaster. It threatens to clog court dockets for years, and it means plaintiffs like Sherry Carney might have to wait a long time for their day in court.

"It was a fine line between life and death; I can tell you that," Carney told WALA-TV, reflecting on how the oil spill changed her life.

Carney was a Dauphin Island city councilwoman at the time. She said she had planned to make her house on the island's fragile west end her "forever home." But she said that months of breathing in toxic fumes took a toll on her health.

In 2012, she said she spent 34 days in the hospital, part of it the intensive care unit. She said the ordeal included four different stints on a ventilator. At times, she added, she was worried she would not make it.

Even after recovering, she said deterioration of her lungs has killed her long-distance running hobby.

"My respiratory system after those four episodes of ventilation won't ever be the same," she said. "I was a runner. I do a lot of walking. But I can't run anymore."

One of the BP's wells blew out off the coast of Louisiana in 2010, leading to the sinking of the Deepwater Horizon drilling rig. Eleven rig workers were killed and millions of gallons of oil

spewed into the Gulf for 87 days.

After the oil spill, federal courts consolidated all lawsuits under U.S. District Judge Carl Barbier in New Orleans. Part of that litigation involved a medical settlement for coastal residents and clean-up workers with spill-related health issues.

But under a ruling by Barbier, the fund is not available to anyone who did not have a doctor's diagnosis by April 16, 2012, or two years after the accident. That shut out people with cancer and other conditions to take a long time to develop. It also bars people like Carney who say they felt the effects shortly after the spill but did not get a prompt diagnosis.

Court records indicate that a doctor diagnosed Carney with chronic sinusitis and chronic bronchitis in April 2013 – a year too late.

“Unfortunately, a lot of people didn’t understand that part,” said Craig Downs, a Miami lawyer who represents some 2,000 people from Florida to Texas.

Barbier has been transferring lawsuits to federal courts with jurisdictions over where the plaintiffs live. More than 500 suits have been filed in Mobile’s federal court this year. BP lawyers have asked that Carney’s case also be transferred.

In court filings, BP attorneys deny responsibility for the plaintiffs' injuries. Jason Ryan, a spokesman for BP America, said the company had no other comment.

Unless there is some sort of settlement that resolves all of these cases, the lawsuits could last for years, and Downs said he expects additional lawsuits.

Another plaintiff, Quinn Breland, said he got sick from exposure to the chemicals used to break up the oil in the aftermath of Deepwater Horizon explosion.

The spill shut down tourism and fishing during summer 2010. Breland, who lives in Theodore, said he owned a business at the time that sold equipment to boat owners. Faced with economic disaster, he said, he joined the clean-up efforts as part of the "Vessels of Opportunity" program and got sick afterward.

"We were not aware of bad things that would happen to you years later," said Breland, who grew so sick he expected to die and now has diminished lung capacity and digestive problems.

He said there is no doubt about the source of his health problems.

"I didn't have heartburn before this oil spill," Breland said. "No. 2, I could breathe before the oil spill."

To win in court, the plaintiffs will have to show not just that they're battling chronic illnesses, but that the oil spill is the cause.

Scientific studies conducted over the past decade may bolster the plaintiffs' case. One of the largest, sponsored by the National Institutes of Environmental Health Sciences, has tracked 22,000 people.



Dale Sandler, chief of the agency's epidemiology branch, said researchers found an increased risk of heart attacks and cardiovascular disease that potentially could be associated with the spill. She also said that the greater people's exposure to burning oil, the more it has affected their lung function.

*By BRENDAN KIRBY, WALA-TV*



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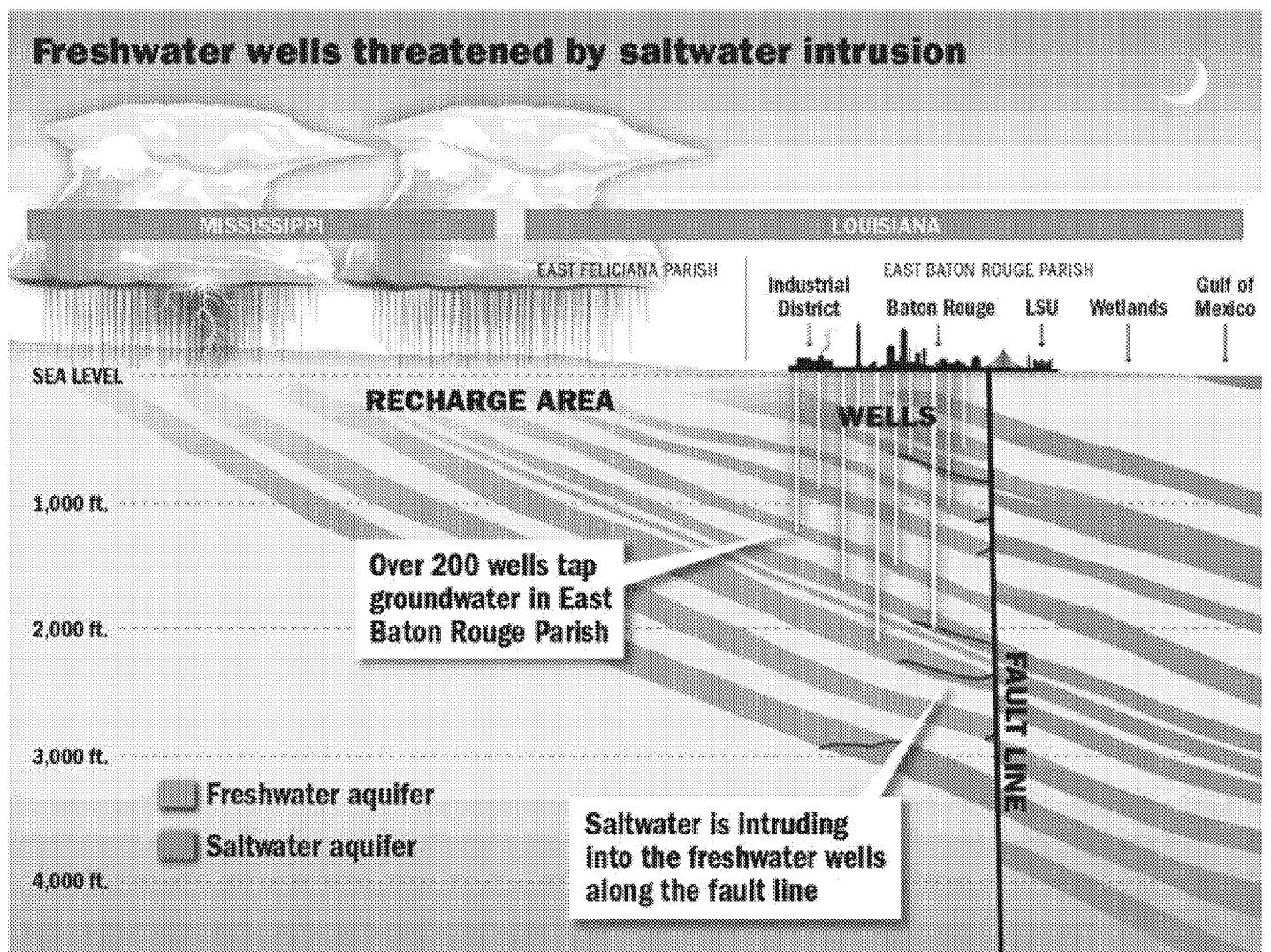
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# **LSU researcher: Southern Hills Aquifer has ample supply; salt water intrusion no crisis**

**BY DAVID J. MITCHELL | STAFF WRITER DEC 5, 2019 - 10:45 PM**



Source: U.S. Geological Survey

Advocate graphic by **DAN SWENSON**

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David Mitchell

Groundwater levels in the aquifer underneath East Baton Rouge Parish have been recovering for at least the past decade, and continuing salt water intrusion into that aquifer doesn't represent a crisis-level threat to the drinking water supply, according to recent research.

Douglas Carlson, an LSU professor and member of the Louisiana Geological Survey who specializes in groundwater research, says media coverage of the Southern Hills Aquifer has overstated the drinking water problem. He says the risk is gradual and localized to some wells that supply drinking water and the parish's industrial corridor along the Mississippi River.

Carlson delivered that assessment earlier this week after he conducted a 40-year statistical analysis of 180 groundwater wells in East Baton Rouge Parish.

"The overall picture is, 'Yes, there is a concern for a couple of pumping stations, but overall the idea that the parish is gonna run out of water entirely or the tap is going to be full of salty water for all the consumers in the utility really doesn't exist, really,' Carlson said in recent comments to a Baton Rouge groundwater commission. "Yes, it's probably best to spread out your demand, but it's not a crisis that suddenly you're going to have salty water tomorrow or even 10 years from now."

Carlson's analysis found all the water-bearing sand layers in the part of the Southern Hills Aquifer under East Baton Rouge had between 3.4 trillion and 15.4 trillion gallons of water of good enough quality to be used. That could supply centuries of water under current pumping rates.

At the same time, the U.S. Geological Survey is finalizing a new estimate of salt water intrusion into parts of the aquifer. John Lovelace, a supervisory hydrologist and assistant director of the U.S. Geological Survey's Lower Mississippi-Gulf Water Science Center, said the report is expected to show the intrusion is moving slowly northward in the lowest water-bearing part of the aquifer.

Carlson's analysis also showed that groundwater levels, though in recovery, did remain at a point that encouraged salt water intrusion in at least two middle sand layers. But Carlson

suggested the movement was slowing — the salt water is advancing only a few hundred feet per year — and the risk was not so severe in the near future.

"To cover a mile would take decades. The thought that it'll sweep through the entire parish, would take literally hundreds of years to move that far north, assuming you had demand migrate northward and the salt water followed," he said.

Carlson's assessment and the imminent USGS report come as the Capital Area Ground Water Conservation Commission is about to take the next step Monday in creating a 50-year strategic plan to manage the region's groundwater sources and respond to the salt water intrusion problem. Part of that task will be assessing the state of the science and the future water demand on the aquifer.

Critics say the state panel hasn't done enough to limit the pumping that abets the intrusion. Environmentalists have also argued that industrial users should be forced to switch to water from the Mississippi River and reserve the groundwater for the public; industries have pointed to the need for a more broadly shared solution.

With help from the Water Institute of the Gulf, the commission has been refining big-picture objectives over the past several months. Those could include developing surface water sources for some aquifer users, restrictions on groundwater use by the type of user, and conservation programs for the general public.

Carlson's assessment received some pushback from a groundwater commissioner Tuesday who suggested that the raw water supply has never been the issue. The salt water intruding across the Baton Rouge Fault and encroaching on key drinking water wells in the city and the industrial supply wells north of the State Capitol has been the issue.

That threat has confronted the commission with a political decision about whether to move that infrastructure north or find other water sources that will help reduce overall pumping demand to slow or halt the salt water intrusion, the commissioner said.

"We could go up to East Feliciana (Parish) and probably pump, you know, as much water as we want, but how much is it going cost to get that down here versus there is a big river right across the way — which one is more feasible economically?" said Matthew Reonas, a state Office of Conservation employee who is the state agency's representative on the commission. "So, those become political and social questions."

Other commissioners, like Mark Walton, have advocated for scavenger wells that intercept the salt water movement and send it deeper underground or into the Mississippi. Baton Rouge Water Co. has used one to protect some of its water wells; the commission is investigating another in Baton Rouge.

While often envisioned as large underground pools of water, groundwater aquifers are no such thing. They are made up layers of sand, clay and rock.

Like strawberry syrup inside a snowball of freshly shaved ice, the groundwater is held in the tiny air spaces among the granules of earth. Wells drilled into the ground are the snowball's straw.

The Southern Hills Aquifer is made up of ten earthen layers, often called sands, stacked on top of one another between 400 feet and 2,800 feet deep.

Though they are collectively referred to as the "aquifer," the sands are individual water sources and are thought to be sealed off by clay.

The aquifer also spreads across the Florida Parishes and parts of the west bank, though Carlson only focused on East Baton Rouge Parish.

Carlson's estimate of supply is a rough tally, given wide variation on what's in the ground. Experts know that the aquifer naturally recharges, but Carlson said he intentionally left that out of his calculations to create a conservative estimate.

Hydrologists know that the aquifer naturally recharges its supply, but experts working for the groundwater commission said they also expected pumping demand to rise in the coming decades.

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# LANL's seismic safety questioned; lab says improvements are being made

By Mark Oswald / Journal Staff Writer

Wednesday, December 4th, 2019 at 10:00pm

SANTA FE – An independent oversight board says that efforts to improve safety at Los Alamos National Laboratory in case of an earthquake — the lab sits on a fault — have stagnated and remain incomplete, even as the lab's mission is ramping up for production of plutonium cores for nuclear weapons.

The Defense Nuclear Facilities Safety Board's report says that a number of concerns "call into question the overall adequacy of the current set of safety controls to protect the public and workers."

A LANL spokesman provided a statement saying the lab has completed many seismic upgrades and is confident that current and future improvements to its plutonium facility "will fully support the Lab's mission needs and meet the safety requirements related to any credible seismic event."

Studies have shown Los Alamos has a probability of a major earthquake once every 10,000 years. In the worst case, a devastating quake would be followed by a fire that could spread contamination.

The DNFSB, created by Congress as a safety watchdog for nuclear weapons labs, said there has been agreement for more than a decade over necessary upgrades to seismic safety systems at LANL's plutonium facility known as PF-4.

LANL has completed several projects, the report says. But completion dates for upgrades "to fire barriers, as well as the ventilation and fire suppression systems, have slipped well beyond LANL's initial estimates," says the Nov. 15 report to U.S. Department of Energy. "These systems are essential to LANL's safety control strategy for post-seismic fires."

LANL hasn't taken into account the impact of falling equipment on spreading doses of radioactive materials, the report states. It says about 75 percent of the gloveboxes at LANL where plutonium work takes place "either do not meet seismic criteria or have not been analyzed to demonstrate that they will not topple in a seismic event."

Other findings in the DNFSB report include that LANL has underestimated the potential dose consequences to the public and workers of "heat source plutonium oxides" and that the lab's assumptions about how quickly exit doors can be closed to prevent hazardous materials leaks after a quake are overly optimistic.

The statement from the LANL spokesman says the lab has in fact completed many structural upgrades at PF-4 "including shield walls, glovebox stands, column supports, and ceiling beam enhancements."

"Ongoing full scale tests of concrete columns show actual seismic performance of these columns exceeds previous assumptions," the statement said. "Fire suppression system upgrades include suppression piping support, upgraded fire alarm panels and a future fire alarm system replacement, and additional diesel generators to support electric fire pumps. In addition, the Laboratory has installed reliable electrical power distribution to ventilation systems."

The statement adds that LANL "has for several years continually worked to reduce Material At Risk (MAR) throughout the PF-4 facility to further meet seismic safety requirements."

Contact the writer.

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## Law students offer legal advice to Española residents with contaminated water

By Makayla Grijalva (<https://www.dailylobo.com/staff/makayla-grijalva>), Amanda Britt (<https://www.dailylobo.com/staff/amanda-britt>)

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University of New Mexico law students are assisting Española community members with legal advice as the town faces water contamination through the Environmental Law Clinic.

The U.S. Environmental Protection Agency (EPA) initiated a remedy a decade ago but has reported that the fix was inadequate at cleaning the deeper portions of the aquifer, which remain contaminated.

"This is not something that most people can or should try to comprehend," said UNM School of Law Professor Clifford Villa. "There is a real role for educational institutions, like the University of New Mexico, to try to help local communities understand some really complex issues including complex matters of regulation."

In the late 1980s, a local dry cleaner contaminated the water supply in the area when chemicals leaked into the soil and then the aquifer lying below it. According to Villa, a "conventional treatment" for this level of contamination involves pumping up the contaminated water, treating it and re-injecting it back into the

ground.

Instead, the EPA used a different treatment — bioremediation. According to the EPA, [bioremediation](https://www.epa.gov/sites/production/files/2015-04/documents/a_citizens_guide_to_bioremediation.pdf) ([https://www.epa.gov/sites/production/files/2015-04/documents/a\\_citizens\\_guide\\_to\\_bioremediation.pdf](https://www.epa.gov/sites/production/files/2015-04/documents/a_citizens_guide_to_bioremediation.pdf)) is the use of microbes to clean up Superfund sites. The growth of microbes that feed off of the contamination is prompted, leading them to essentially eat away the contamination and leave clean water behind.

New microbes are not introduced in the site, but rather the microbes already in the soil are stimulated — thus growing their population.

"It sounds like a really interesting idea," Villa said. "It's sort of using the power of nature, harnessing nature, except that now you have to find the right bugs to eat the contamination. Maybe they're not hungry."

The [second five-year review](https://drive.google.com/file/d/0BwEqxMKfDdwRUXVRZmliRHJoY2R6UjVzTWZBNE5MYWFOQnk4/view?usp=sharing)

(<https://drive.google.com/file/d/0BwEqxMKfDdwRUXVRZmliRHJoY2R6UjVzTWZBNE5MYWFOQnk4/view?usp=sharing>) of the site conducted by the EPA in 2015 said that the remedy "has not functioned as designed and has not been effective in reducing contamination" in the deep zone aquifer, as reported in the document.

Bioremediation was first implemented at the site ten years ago.

In August 2019, the EPA sent a [letter](https://drive.google.com/file/d/0BwEqxMKfDdwRZ09sc3FEQ2xRUkk5Z0hSalIxQjBreV9NVmZF/view?usp=sharing)

(<https://drive.google.com/file/d/0BwEqxMKfDdwRZ09sc3FEQ2xRUkk5Z0hSalIxQjBreV9NVmZF/view?usp=sharing>) to the New Mexico Environment Department informing them that the Long-Term Response Action will be transferred to their oversight, meaning this problem becomes the state's responsibility instead of the federal government's.

The 1980 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) mandates that the EPA must review Superfund sites every five years, up to ten years after a site becomes functional after a remedy.

Villa first became interested in the Española Superfund site about a year ago when one of his students, Mara Yarbrough, presented the problem as a class project highlighting the injustice to the area's community.

Yarbrough continues to gather information and work with people in the community of Española and Questa, helping them navigate legal issues and spread awareness of the situation in general.

"In that ten-minute student presentation (from Yarbrough), I learned a lot about not just environmental problems, but the real apparent environmental injustice that that site represented particularly in contrast to another very similar site in Albuquerque," Villa said.

That contrast dates back to 1989, when contaminated sites were found in both Albuquerque and 90 minutes north in Española. The contaminated sites were caused by the same source — an old dry cleaning business.

"They were the same chemicals from dry-cleaning contamination," Villa said. "And yet for some reason, they chose the pump and treat technology in Albuquerque, but for Española they (the EPA) chose a very different technology."

Before coming to UNM in 2015, Villa previously served as an attorney and legal counsel for the EPA for 22 years.

Last month, Villa led a group of UNM law students — which included Yarbrough — on a trip up to northern New Mexico to learn more about the contamination plume in Española. They also visited another Superfund site in Questa.

"I thought it would be a wonderful learning experience for our law students to go and see those sites themselves," Villa said. "Particularly to be there and have an opportunity to talk with members of the local community and the local government and hear their concerns directly, interact with them."

"It's important that the students understand not just the law in abstract or on the front page, but how that law is applied in the real world (and) particularly the real world around us," Villa said.

In addition to providing legal advice to the residents of Rio Arriba County, the Environmental Law Clinic also deals with a range of other environmental issues — from urban environmental justice communities that are experiencing disproportional pollution impacts to work with land grants and acequias in rural communities.

Gabe Pacyniak, the faculty supervisor of the Natural Resources and Environmental Law Section of the clinic, said roughly 70% of the clientele they work with live in rural parts of New Mexico. The clinic often helps with property disputes, land grants and managing individuals' water rights.

"A lot of the work deals with the complicated legal issues in New Mexico," Pacyniak said. "Including some very significant pollution issues including hazardous waste and the kind of Superfund site issues that we see in various locations throughout the state."

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# Port Neches told again to shelter-in-place; school canceled

By Jacob Dick, Isaac Windes, Monique Batson, and Chris Moore

Updated 1:05 pm CST, Thursday, December 5, 2019



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**IMAGE 1 OF 252**

TPC Group chemical plant in Port Neches

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"I mean, this is getting ridiculous at this point," Port Neches-Groves ISD Superintendent Mike Gonzales said after his district canceled classes for the rest of the week.

The district, which had resumed classes Tuesday after the Nov. 27 TPC Group explosions rocked Port Neches, was notified Wednesday night along with town residents that another shelter-in-place order had been called for the city.

The unified command responding to the incident made the call shortly after 6 p.m. after a monitor near the site detected a large concentration of 1,3-butadiene. Lower temperatures and south winds predicted through the night pushed officials to take precautions.

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Gonzales said the district knew only as much as residents were being told at the moment of the order, but he made the call to cancel for the next several days so

all precautions could be made before students again return to class.

"What I will say is that if they are having this shelter-in-place, we are going to need at least a few more days to get back in there and retest ... and make sure that everything is good inside the schools before I can send the kids back," he said.

1,3-butadiene has been recognized for several decades as a known carcinogen by the International Agency for Research on Cancer, an agency formed under the World Health Organization of the United Nations and considered one of the premier authorities on cancer.

Tommy John Kherkher, managing partner for The Kherkher Law Firm, who has handled cases with similar known carcinogens, said a shelter-in-place would be appropriate given the nature of even limited exposure to chemicals like 1,3-butadiene, but only if people's homes haven't been damaged.

"It's a gas, it seeps into wherever it's exposed to," he said. "It doesn't give full protection to just stay inside if your home isn't airtight or your ventilation hasn't been inspected."

Kherker said he suggests people leave the area if they are unsure of their protection from the outside and to have their homes, outside fixtures and even their car thoroughly cleaned to reduce exposure.

Issues with butadiene levels had been reported as early as Monday and elected officials were briefed on a possible leak at the plant before the shelter-in-place order.

After testing 146 locations around Port Neches and Groves from Sunday night to Monday night, the agency reported one location just outside the plant that tested for double the actionable level of VOCs and an extremely high level of 1,3-butadiene.

Jefferson County Judge Jeff Branick said Wednesday morning that officials were told about a detected butadiene release that could have come from a pressure

valve on one of the company's pipelines that had malfunctioned but was being fixed.

Monitors recorded a similar sample to Monday night's findings of VOCs and butadiene at about 11 p.m. Tuesday.

Three samples early Wednesday showed elevated levels of VOCs considered in the moderate health risk category for prolonged exposure at locations all within a quarter mile of the plant. None was as high as the sample at the fence line.

The suspected center of the fire was a butadiene processing unit in the plant, but no official causes have been determined.

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On Wednesday morning, Branick said representatives from the Chemical Safety Board had joined the unified command for regular briefings, but he had already been told their investigation wouldn't wrap for likely a year or more.

Despite frustrations or apprehension some Jefferson County residents might have about the lack of information, he said a lengthy investigation was the best thing for the area's future.

"They want to look at all the evidence, be thorough and be correct, which is what we all want to ensure something like this doesn't happen again," Branick said.

Kendrick Meets was preparing to board up the windows at his house on Holland Avenue on Wednesday to cover the vacant spaces left by the explosion. One week after the incident, Meets said he would like to know what chemicals were in the tanks at the plant.

"I've been sneezing like crazy," he said. "I don't have (any) allergies. It's got something to do with (the explosion), because we were close to it."

Meets moved in with a friend two months ago after moving back to Southeast Texas from Maryland more than a year ago.

Now, he's wondering what will happen to his new home.

He said he's heard rumors the TPC Group plant will start production again soon, and wonders how that could be possible when residents don't have an answer about the explosion.

"What's going on here?" Meets asked. "They need to let us know. Especially the ones who live right up on it."

More than 32,000 samples have been taken by handheld monitors from crews on the ground since Nov. 27, and environmental contractors with the company have established at least 30 stationary air monitors across the region.

CTEH, an Arkansas based toxicology contractor with three branches in Texas, has sent about 120 environmental specialists to the area with 95 expected to conduct monitoring in the community, according to the unified command.

Environmentalists and air quality monitors weren't the only crews on the ground in Port Neches on Wednesday.

TPC Group reported 220 claims assessors had been deployed, 100 of whom would be making inspection appointments to homes. It was the largest number of claims personnel on hand since the incident began and came after the company increased its capacity for claims calls at its helpline center.

At least 5,000 calls had been logged by Tuesday night and 270 claims were already paid. No data was available on whether those were damage claims or evacuation claims or how much had been paid.

Matt Vincent, a Port Neches resident waiting for inspectors to visit his home next Tuesday, said he was staying positive about TPC's response but also felt it was a good idea to file a claim with his home insurance, along with getting an independent structural engineer.

Vincent said he had 20 years' experience in the insurance industry, and even had to work the surrounding scene of plant explosions in the past, so he can



understand both sides of the incident.

"With homeowners that settle with TPC's insurance, if something happens later, then that is it," Vincent said. "If you have a claim with your insurer, then that can save you in the event that the damage turns into something else."

He compared the strategy for claims and recovery to that of hurricanes, except homeowners actually have someone to make a claim against in this case.

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Other Port Neches residents were preoccupied with questions about what would happen long after damage assessors left their neighborhoods.

Sierra Garcia was at Riverfront Park in Port Neches, blocks away from the TPC Group plant.

She moved to Port Arthur from New Orleans three months ago along with her husband and 1-year-old daughter, Isabella.

She and her husband graduated from McNeese State and he began working at Motiva. The two were looking to move to Port Neches but are now reconsidering because of the blast.

"We were looking at homes in Port Neches and Lumberton," she said. "Now, we are leaning more toward Lumberton."

Garcia said her family has been relatively healthy aside from her and her husband having headaches the day after the explosion.

Garcia said the park normally has approximately 15 people, but her daughter played alone Wednesday.

"She usually has little friends that she tries to play with," Garcia said as Isabella swung by herself. "I hope the air is safe. I know they have said it is safe, but I

hope they are telling the truth."

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